

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
c/o Antitrust Division	)	
Department of Justice	)	
600 E Street, N.W.	)	
Washington, D.C. 20530,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
vs.	)	
	)	
VISION SERVICE PLAN,	)	
3333 Quality Drive	)	
Ranch Cordova, CA 95670,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed by the United States under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain a continuing violation by the Defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The Defendant transacts business and is found within the District of Columbia, within the meaning of 15 U.S.C. § 22.

## II.

### DEFENDANT

3. Vision Service Plan ("VSP"), is a California not-for-profit corporation with its principal place of business in Rancho Cordova, California. The Defendant offers vision care insurance plans. To obtain services for covered patients, the Defendant enters into agreements with member optometrists and ophthalmologists in private practice (panel doctors), that govern their provision of vision care services to VSP patients.

4. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

## III.

### CONCERTED ACTION

5. Various firms and individuals, not named as defendants in this Complaint, have participated with the Defendant in the violation alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

## IV.

### TRADE AND COMMERCE

6. At material times, the Defendant has engaged in the business of underwriting or administering vision care insurance

plans ("VSP plans") in 42 states (46 effective January 1, 1995) and the District of Columbia. The Defendant obtains vision care services for persons covered by VSP plans by establishing panels of contracting doctors, who each sign and agree to comply with the Panel Doctor's Agreement with VSP, which, among other things, governs payment for covered services rendered to VSP patients. The Defendant contracts with approximately 17,000 panel doctors.

7. At material times, the Panel Doctor's Agreement between each panel doctor and the Defendant has contained a "most favored nation" clause, characterized by VSP as a Fee Non-Discrimination Clause, pursuant to which each panel doctor agrees:

(a) not to charge fees to VSP that are any higher than those charged to the doctor's non-VSP patients, nor those that the doctor accepts from any other non-governmental group, group plan, or panel;

(b) if a published VSP fee schedule would cause payment in excess of the doctor's usual and customary fee, to notify VSP and accept such lower fee as is consistent with the doctor's usual and customary fees; and

(c) if VSP determines that the doctor is charging fees to VSP that are higher than those charged non-VSP patients, VSP shall reduce the doctor's fees accordingly.

8. At material times, in all or parts of many states in which the Defendant does business, it has contracted with a

relatively high percentage of optometrists in private practice. In all or parts of many states in which the Defendant does business, payments from the Defendant have constituted a significant portion of most panel doctors' revenue from the provision of vision care services to patients having some form of vision care insurance coverage.

9. Vision care insurance plans seeking to market their plans to employers and other potential patient groups, in competition with the Defendant, need to attract or retain at competitive prices a geographically varied panel comprising a substantial number of qualified optometrists. After the Defendant began actively enforcing the most favored nation clause in its Panel Doctor's Agreement, in all or parts of many states in which the Defendant does business, many of its panel doctors refused to discount their fees to competing vision care insurance plans or to uninsured patients because VSP's most favored nation clause would have required them similarly to lower all of their charges to the Defendant. Because many of the Defendant's panel doctors receive a substantial portion of their professional income from serving VSP patients, the costs to the doctors of having to lower the fees they charge VSP would have been too great. Consequently, the Defendant's most favored nation clause has, in effect, caused many of its panel doctors to charge all of their other patients and other vision care insurance plans, in competition with VSP, fees as high as or higher than those charged to VSP.

10. In all or parts of many states in which the Defendant does business, the Defendant's most favored nation clause has caused large numbers of panel doctors, who otherwise would have discounted their fees to participate in competing vision care insurance plans, to drop out of such plans or to refuse to join such plans. The Defendant's most favored nation clause also has caused a large number of panel doctors, who do contract with vision care insurance plans competing with VSP, to insist, as a condition of continuing such participation, that the plans increase their payments to the levels paid by VSP.

11. Because in all or parts of many states in which the Defendant does business, a relatively large percentage of optometrists in private practice are VSP panel doctors, and because revenue from serving the patients covered by VSP plans is a significant portion of many of those panel doctors' professional income, among other reasons, the Defendant's most favored nation clause has resulted in many competing vision care insurance plans being unable to attract or retain sufficient numbers of panel doctors to serve their members at fee levels below those paid by VSP. In all or parts of many states in which the Defendant does business, the Defendant's most favored nation clause has substantially restricted many competing plans' ability to attract and serve groups of patients on competitive terms.

12. Many corporate employers remit across state lines not insubstantial premium payments to the Defendant for underwriting or administering vision care insurance for their employees.

13. Many corporate employers that remit premiums to the Defendant are businesses that sell products and services in interstate commerce, and the premium levels paid by such businesses affect the prices of the products and services they sell.

14. At material times, the Defendant has used interstate banking facilities and purchased not insubstantial quantities of goods and services across state lines, for use in providing vision care insurance coverage or vision care services to patients.

15. The activities of the Defendant that are the subject of this Complaint have been within the flow of, and have substantially affected, interstate trade and commerce.

V.

VIOLATION ALLEGED

16. Beginning at a time unknown to the Plaintiffs and continuing through at least November, 1994, in all or parts of many states in which Defendant does business, the Defendant entered into agreements with its panel doctors in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to recur unless the relief hereinafter sought is granted.

17. For the purpose of forming and effectuating these agreements, the Defendant did the following things, among others:

(a) required panel doctors to agree to the most favored nation clause in the VSP Panel Doctor Agreement, with the effect of restricting the willingness of panel doctors to discount fees for vision care services and substantially reducing discounted fees for vision care services;

(b) enforced the most favored nation clause in the VSP Panel Doctor agreement; and

(c) coerced many panel doctors into dropping out of, or charging higher fees to, vision care insurance plans that attempt to compete with the Defendant.

18. These agreements had the following effects, among others, in all or parts of many states in which the Defendant does business:

(a) price competition among vision care insurance plans has been unreasonably restrained because many competing vision care insurance plans have been unable to obtain or retain a sufficient number of optometrists to provide services to their members at competitive prices because panel doctors have withdrawn from, refused to participate in, or insisted on higher fees from vision care insurance plans that seek to pay them less than the Defendant;

(b) prices for the provision of vision care services to non-VSP patients and plans in competition with the

Defendant have been raised because many VSP panel doctors have opted not to discount their fees to competing vision care insurance plans or to uninsured patients; and

(c) consumers of vision care services have been deprived of the benefits of free and open competition.

VI.

PRAYER

WHEREFORE, the Plaintiff prays:

1. That the Court adjudge and decree that the Defendant entered into unlawful agreements in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. That the Defendant, its members, officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained and prohibited for a period of five years from, in any manner, directly or indirectly, continuing, maintaining, or renewing these agreements, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation.



3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

DATED:

For Plaintiff:

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